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EXAMINER

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/912,427

Applicant(s)

NEEDHAM ET AL.

Examiner

George C. Neurauter, Jr.

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 July 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/George C. Neurauter, Jr./
Primary Examiner, Art Unit 2143

Continuation of 10. Other (including any explanation in support of the above items):

The brief fails to comply with 37 CFR 41.37(c)(1)(ii). A statement identifying all prior and pending appeals, judicial proceedings or interferences known to the appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal is required. Applicant's stated in the brief that "Without conceding that P11166 is related in any way to, or that it should have any impact on, the present appeal, Appellants nonetheless bring this matter to the Board's attention because P11166 was referenced during the early phase of prosecution of the present application. There are no interferences before the Board of Patent Appeals and Interferences known to Appellant, the Appellant's legal representatives, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.". This statement essentially states that the Applicant refuses to concede to the issue of whether the referenced appeal may be related to the current appeal and therefore is noncompliant.

The brief's statement in support of 37 CFR 41.37(c)(1)(iii) is factually incorrect and therefore noncompliant since the claims are not "finally rejected".

The brief fails to comply with 37 CFR 41.37(c)(1)(iv) since at least one amendment has been submitted subsequent to final rejection and the Applicant alleges that no amendments have been filed.

The brief fails to comply with 37 CFR 41.37(c)(1)(vii) since the brief fails to present an argument or treat in any way under a separate heading for the double patenting rejection wherein claims 1-32 are rejected on the ground of nonstatutory double patenting over claims 1-5 of U. S. Patent No. 6,606,398 B2 to Cooper that was introduced in the Office Action mailed 15 December 2005.